

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ORDER ADDING RULES 79.1, 91, 92, 93, 94 AND 95 OF THE
COURT OF CHANCERY OF THE STATE OF DELAWARE.

WHEREAS the Chancellor and Vice Chancellors of the Court of Chancery have, with the advice and assistance of the Court of Chancery Rules Advisory Committee, given consideration to the operation of Rules 79.1, 91, 92, 93, 94 and 95 of the Rules of the Court,

NOW, THEREFORE, for good cause, IT IS HEREBY ORDERED this 29th day of September, 2003, pursuant to 10 *Del. C.* § 361 that the Rules of the Court of Chancery are hereby amended, effective immediately, to add the following new Rules:

ORDER

Rule 79.1. Electronic filing.

- (a) The electronic filing of documents in the Court of Chancery of the State of Delaware shall be referred to as “eFile” or “eFiling”.
- (b) When the Chancellor of the Court of Chancery determines that it is appropriate for any civil case, or category of cases, to follow the procedures for eFiling, the Chancellor shall designate it as an eFile case or category of cases.
- (c) The Chancellor shall establish administrative procedures for the eFiling of documents.
- (d) A technology surcharge of 50 cents per document shall be assessed in each eFile case for the purpose of a fund to operate the eFiling system. The Court shall expend the funds solely for the purpose of operating and maintaining the eFiling system.

- (e) No Delaware lawyer shall authorize anyone to eFile on that lawyer's behalf, other than an employee of his/her law firm or service provider retained by that lawyer to assist in eFiling.
- (f) No person shall use, or allow another person to use, the password of another in connection with any eFiling.
- (g) The eFiling of a document by a lawyer, or by another under the authorization of a lawyer, shall constitute a signature of that lawyer under Court of Chancery Rule 11.
- (h) All eFilings must be signed by a member of the Delaware Bar or party not represented by an attorney in accordance with the eFile administrative procedures.
- (i) Unless otherwise ordered, the electronic service of a document, in accordance with the eFile administrative procedures, shall be considered service under Court of Chancery Rule 5.

Technology Disputes

Rule 91. Technology Disputes Arising at Law.

The Court shall have jurisdiction to adjudicate a technology dispute involving solely a claim for monetary damages only in the event the amount in controversy exceeds one million dollars.

Rule 92. Consent to Litigate

- (a) Provided that the parties and the amount in controversy meet the eligibility requirements in 10 *Del. C.* § 346, a written agreement to engage in litigation in the Court of Chancery is acceptable if it contains the following language: "The parties agree that any dispute arising under this agreement shall be litigated in the Court of Chancery of the State of Delaware, pursuant to 10 *Del. C.* § 346. The parties agree to submit to the jurisdiction of the Court of Chancery of the State of Delaware and waive trial by jury."
- (b) The filing fees and costs for a technology dispute shall be established by a Standing Order of the Court which shall be maintained by the Register in Chancery.

Rules Governing Private Mediation Proceedings for Business and Technology

Disputes

Rule 93. Scope of Rules

- (a) These rules shall govern the procedure in mediation proceedings for technology disputes and business disputes pursuant to 10 *Del. C.* §§ 346 and 347.
- (b) In the case of disputes involving solely a claim for monetary damages, a matter will be eligible for mediation only if the amount in controversy exceeds one million dollars.
- (c) The parties with the consent of the Mediator may change any of these mediation rules by agreement.
- (d) *Definitions.* (1) “Mediation” means the process by which a Mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution and includes all contacts between the Mediator and any party or parties, until such time as a resolution is agreed to by the parties or the parties discharge the Mediator.
 - (2) “Mediator” means a judge or master sitting permanently in the Court.
 - (3) “Mediation conference” means that process, which may consist of one or more meetings or conferences, pursuant to which the Mediator assists the parties in seeking a mutually acceptable resolution of their dispute through discussion and negotiation.
 - (4) “Consent to Mediate,” means a written or oral agreement to engage in mediation in the Court of Chancery. Provided that the parties and the amount in controversy meet the eligibility requirements in 10 *Del. C.* § 347, a consent to mediate is acceptable if it contains the following language: “The parties agree that any dispute arising under this agreement shall be mediated in the Court of Chancery of the State of Delaware, pursuant to 10 *Del. C.* § 347.”

Rule 94. Commencement of Mediation.

- (a) *Petition.* (1) Mediation is commenced by submitting to the Register in Chancery a petition for mediation (hereinafter a “petition”) and the filing fee specified by the Register in Chancery. The petition must be signed by Delaware counsel, as defined in Rule 170(b). Sufficient copies shall be

submitted so that one copy is available for delivery to each party as hereafter provided, unless the Court directs otherwise.

(2) The petition shall be sent by the Register in Chancery, via next-day delivery, to either a person specified in the applicable agreement between the parties to receive notice of the petition or, absent such specification, to each party's principal place of business or residence. The petitioning party shall provide the Register in Chancery with addresses of each party.

(3) The petition will identify the issues to be mediated and specify the method by which the parties shall attempt to resolve the issues. The petition must also contain a statement that all parties have consented to mediation by agreement or stipulation, that at least one party is a business entity, that at least one party is a business entity formed or organized under the laws of Delaware or having its principal place of business in Delaware, and that no party is a consumer with respect to the dispute. In the case of disputes involving solely a claim for monetary damages, the petition must contain a statement of the amount in controversy.

(4) *Confidentiality.* The petition and any supporting documents are considered confidential and not of public record. The Register in Chancery will not include the petition as part of the public docketing system.

(b) *Appointment of the Mediator.* Upon receipt of a petition, the Court will appoint a Mediator.

(c) *Date, Time, and Place of Mediation.* The Mediator will set the date, time, and place of the mediation conference within 15 days following receipt of the petition. The mediation conference generally will occur no later than 60 days following receipt of the petition.

(d) *Submission of Documents.* There shall be no formal discovery in connection with a mediation proceeding under these Rules. The Mediator may request parties to exchange or provide to the Mediator documents or other material necessary to understand the dispute or facilitate a settlement. The parties may agree to exchange any documents or other material in the possession of the other that may facilitate a settlement.

Rule 95. Mediation Conference.

(a) *Participation.* At least one representative of each party with an interest in the issue or issues to be mediated and with authority to resolve the matter must participate in the mediation conference. Delaware counsel, as

defined in Rule 170 (b), shall also attend the mediation conference on behalf of each party.

(b) *Confidentiality.* Mediation conferences are private proceedings such that only parties and their representatives may attend, unless all parties agree otherwise. A Mediator may not be compelled to testify in any judicial or administrative proceeding concerning any matter relating to service as a Mediator. All memoranda and work product contained in the case files of a Mediator are confidential. Any communication made in or in connection with the mediation that relates to the controversy being mediated, whether made to the Mediator or a party, or to any person if made at a mediation conference, is confidential. Such confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding with the following exceptions: (1) Where all parties to the mediation agree in writing to waive the confidentiality, or (2) where the confidential materials and communications consist of statements, memoranda, materials, and other tangible evidence otherwise subject to discovery, which were not prepared specifically for use in the mediation conference. A mediation agreement, however, shall not be confidential unless the parties otherwise agree in writing.

(c) *Civil Immunity.* Mediators shall be immune from civil liability for or resulting from any act or omission done or made in connection with efforts to assist or facilitate a mediation, unless the act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another.

(d) *Mediation Agreement.* If the parties involved in the mediation conference reach agreement with regard to the issues identified in the petition, their agreement shall be reduced to writing and signed by the parties and the Mediator. The agreement shall set forth the terms of the resolution of the issues and the future responsibility of each party.

(e) *Termination of Mediation Conference.* (1) The Mediator shall officially terminate the mediation conference if the parties are unable to agree. The termination shall be without prejudice to either party in any other proceeding. The Mediator shall have no authority to make or impose any adjudication, sanction, or penalty upon the parties. No party shall be bound by anything said or done at the conference unless an agreement is reached.

(2) The Mediator is ineligible to adjudicate any subsequent litigation arising from the issues identified in the petition.

(f) *Compensation for Mediation.* The Court will be compensated by the parties to the mediation in accordance with the schedule of fees maintained by the Register in Chancery.

S/William B. Chandler III
Chancellor

S/Stephen P. Lamb
Vice Chancellor

S/Leo E. Strine, Jr.
Vice Chancellor

S/John W. Noble
Vice Chancellor